IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.175 Of 2000.

Date of decision: June 22nd, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Dev Raj and Others. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl.Advocate General.

For the respondents: Mr.Rakesh Jaswal, Advocate.

Surinder Singh, J(oral):

The respondents were put on trial under Sections 147, 149,323 and 325 of the Indian Penal Code, in the court of learned Chief Judicial Magistrate, in Criminal Case No 137-2 of 1995. Vide judgment, rendered on 24.9.1998 in this case, the respondents were acquitted.

The judgment of acquittal has been assailed by means of the present appeal by the State-appellant. It is contended that the learned trial court did not appreciate the evidence of the injured persons, namely, Ram Piari, Satya Devi, Manju Bala, Sanjiv Kumar, Jagdish Chand and Pawan Kumar in the right perspective and their testimonies were duly corroborated by the recovery effected from the accused and also the medical

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

evidence on record. Therefore, the impugned judgment deserves to be reversed and respondents are required to be convicted and sentenced.

Leave to appeal was granted by this Court on 27.4.2000. Now the matter is being finally heard.

I have heard Shri V.K. Verma, learned Additional Advocate General for the State and Shri Rakesh Jaswal, Advocate, for the respondents and have examined the evidence on record.

In nut shell, the prosecution story is that the family of Sanjiv Kumar, complainant, was already locked in litigation with the respondents, regarding the land located adjoining to the courtyard of the respondents. The respondent Lokhi Devi had constructed a house nearby in the year 1994. Thus, an alley existed between her house and the house of the complainant which was being used as passage by them. It is alleged that on 15.2.1995, respondent Dev Raj had blocked the said passage by raising two feet wall. The complainant party called Satpal and Ram Piari Ex-members of the Gram Panchayat to the spot and to remove the stones of the wall, making it easy to pass through the passage. The respondent Dev Raj replaced stones on the wall when it was objected to, by the complainant, he is said to have been given beatings and was dragged towards courtyard of his house. In the mean time, the other respondents joined them, in the pursuit. All of them are alleged to have given blows by kicks and fists and also indulged in brick batting. Smt. Satya Devi and Pawan Kumar, the family members of the complainant got attracted by the

cries, on reaching the spot they were pelted stones by the respondents. Chander Swaroop and Partap Chand are alleged to have intervened to pacify. Sanjiv Kumar and Satya Devi, sustained injuries as indicated in their medico legal certificates Ext.PW2/B and Ext.PW2/C, respectively, received in brick batting from respondent Dev Raj, resulting into loss of two teeth of Manju Bala (PW) coupled with simple injuries. To this effect, her Medico Legal Certificates are Ext.PW2/A and Ext.PW10/A, which were obtained by the police after registering a case on the statement Ext.PW3/A of Shri Sanjiv Kumar, on the basis of which FIR Ext.PW7/A was formally registered under the aforesaid sections. Dandas Exts.P1 to P3 were taken into possession from Gian Chand, vide memo Ext.PW6/B alongwith pieces of the bricks and stones vide memo Ext.PW6/A. Site plan Ext.PX was also prepared. After completing the investigation, the challan was presented in the trial court.

Finding a prima-facie case against the respondents under Section 147, 149, 323 and 325 of the Indian Penal Code, the charges were framed which were put to the respondents. They pleaded not guilty and claimed trial.

To prove its case, the prosecution examined PW1 Ram Piari, Ex-member of the Gram Panchayat, PW2 Dr.Rajesh Kumar, PW3 Satya Devi, PW4 Manju Bala, PW5 Sanjiv Kumar complainant, PW6 Jagdish, PW7 HC Gopal Chand, PW8 Pawan Kumar, PW9 Chander Swaroop,, PW10 Dr. T.D. Tandon, PW11 SI Bhola Ram and PW12 ASI Dile Ram, Investigating Officer.

The respondents were also examined under Section 313 of the Code of Criminal Procedure. They have explained the circumstances put to each of them. According to them, the level of passage was not raised as alleged, but the complainant had removed the stones which were fixed by Dev Raj at his courtyard when it was being replaced in the corner by him, Sanjiv Kumar entered there and asked him about the removal of the stones from the Courtyard then he alongwith Pawan Kumar, Satya Devi and Manju Bala started giving beating him. While maintaining their innocence, it was stated that the relationship between the parties were not cordial on account of civil litigation with respect to this land and it is on this account, they nurtured enmity and filed a false case against them. Dev Raj had also instituted a case with respect to the same incidence in the court of Sub Divisional Judicial Magistrate, Ghumarwin and Gram Panchayat.

Upon hearing the parties and going through the evidence on record, the learned trial Court found that the evidence of the prosecution, witnesses were not worthy of credence on account of material contradictions and also the fact that the accused party had sustained injuries in the same incident which were not explained. The MLCs of Dev Raj, Lokhi Devi and Gian Chand Exts.PW2/D, Ext.PW2/E and Ext.PW2/F, respectively, which were also proved by PW2 Dr. Rajesh Kumar. Further a civil suit with regard to this land was pending *inter se* the parties which was also dismissed by the Senior Sub Judge, Bilaspur vide judgment Ext.D2, which was filed by complainant Sanjiv Kumar alongwith Satya Devi, Manju Bala

and Pawan Kumar as co-plaintiffs. Ext.D1 is a complaint filed by the respondent Dev Raj regarding the same incident against the aforesaid persons under Sections 504, 506, 145, 323 and 34 of the Indian Penal Code, which was sent for trial to the Panchayat. This fact has been admitted by the PWs in their statements. PW6 Jagdish in his cross-examination has also admitted that he had gone to the spot and saw Dev Raj respondent with a bleeding injury. He took him to the dispensary. It may be noticed that the complaint and dispute was over a passage allegedly between the House of Dev Raj, respondent and the cow shed but PWs have stated the dispute was with respect to the passage existing between cowshed and the house of Lokhi Devi. The site plan Ext.PX shows no passage between the cowshed and the house of respondent Dev Raj, which means that the complainant party had tried to assert a new passage between the house of Dev Raj and cowshed which was not in existence. Thus finding on a slippery ground, they had tried to shift their stand during the trial.

Thus, the entire discussion goes to show that the very genesis of the prosecution story has been suppressed by the prosecution witnesses and in the light of the aforesaid evidence, the learned trial court had rightly come to the conclusion that the case against the respondents was not proved. On the reappraisal of the evidence on record, the view taken by the learned trial court is quite reasonable and plausible, therefore, impugned judgment of acquittal requires no interference. Accordingly, the appeal is dismissed.

The respondents are discharged of their bail bonds entered upon by them at any stage during the proceedings of this case. The matter stands disposed of.

June 22nd, 2007. **(Surinder Singh)**
(PDS) **Judge**.